



5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 206, 215, 234, and 235

[Docket DARS-2018-0053]

RIN 0750-AJ83

**Defense Federal Acquisition Regulation Supplement: Amendments
Related to General Solicitations (DFARS Case 2018-D021)**

AGENCY: Defense Acquisition Regulations System, Department of
Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense
Federal Acquisition Regulation Supplement (DFARS) to implement
sections of the National Defense Authorization Act for Fiscal
Year 2018, which expand the definition of "competitive
procedures" in 10 U.S.C. 2302 and extend the term and increase
the dollar value under the contract authority for advanced
development of initial or additional prototype units.

DATES: Effective **[Insert date of publication in the FEDERAL
REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Ms. Heather Kitchens,
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SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the *Federal Register* at 83 FR 54698 on October 31, 2018, to implement sections 221 and 861 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Pub. L. 115-91).

Section 221 amends 10 U.S.C. 2302(2)(B) to allow for an expanded application of other competitive procedures by replacing the words "basic research" with "science and technology". "Competitive procedures" were defined in 10 U.S.C. 2302(2)(B) to include "the competitive selection for award of basic research proposals resulting from a general solicitation, and the peer review or scientific review (as appropriate) of such proposals." Changing the words "basic research" to "science and technology" expands the meaning of other competitive procedures to apply to "advanced technology development" and "advanced component development and prototypes" research proposals, in addition to "basic research" and "applied research" proposals. One of the solicitation methods for research and development proposals, a broad agency announcement (BAA), is defined in the Federal Acquisition Regulation (FAR) as "a general announcement of an agency's research interest including criteria for selecting proposals and soliciting the participation of all offerors capable of satisfying the Government's needs." Section 221 permits the use of BAAs for competitive selection of science and technology proposals by

authorizing the use of the competitive procedures at 10 U.S.C. 2302(2)(B) that result from a general solicitation and peer or scientific review of such proposals - a key element of the BAA process.

Section 861 amends 10 U.S.C. 2302e to allow for an extended term limit and increased dollar threshold under the contract authority for advanced development of initial or additional prototype units awarded from a competitive selection, as specified in 10 U.S.C. 2302(2)(B). The statutory term limit extends from 12 months to 2 years and the dollar threshold increases from \$20 million to \$100 million in fiscal year 2017 constant dollars (10 U.S.C. 2302e). Section 861 also amends 10 U.S.C. 2302e to repeal the obsolete authority implemented by section 819 of the NDAA for FY 2010 (Pub. L. 111-84), thereby eliminating the expiration date of the authority.

One respondent submitted a public comment on the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comment in the development of the final rule. A discussion of the comment received and any changes made to the rule is provided as follows:

A. Summary of Significant Changes

DoD did not make any changes to the proposed rule as a result of the public comment.

B. Analysis of Public Comment

Comment: The respondent recommended the proposed rule update 213.106-1(b) to address documentation requirements related to competition for actions not exceeding the simplified acquisition threshold (SAT).

Response: Since there is no DFARS 213.106-1(b) section, DoD reviewed FAR 13.106-1(b), Soliciting Competition, which allows contracting officers to solicit from a single source, for purchases not exceeding the SAT, if the contracting officer determines that circumstances deem only one source reasonably available. This rule relates to soliciting proposals using other competitive procedures (such as a broad agency announcement) and is not related to solicitations of a single source for purchases not exceeding the SAT; therefore, DoD determined that the public comment is outside the scope of this rule.

C. Other Changes

One minor editorial change is made to the final rule. DoD compared the proposed rule to the current version of the DFARS text and noted the need to correct a typo at DFARS 215.371-4(a) by changing the word "sections" to "section".

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not add any new provisions or clauses or impact any existing provisions or clauses.

IV. Executive Orders 12866 and 13563

Executive Order (E.O.s) 12866, Regulatory Planning and Review; and E.O. 13563, Improving Regulation and Regulatory Review, direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This final rule is not an E.O. 13771 regulatory action, because this rule is not significant under E.O. 12866.

VI. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared and is summarized as follows:

This rule proposes to amend the DFARS to implement sections 221 and 861 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018.

Section 221 expands the definition of "competitive procedures" at 10 U.S.C. 2302(2) (B) by removing the term "basic research" and adding "science and technology" in its place. Section 861 implements a statutory modification to 10 U.S.C. 2302e to extend the term limit and dollar threshold for the contract authority for advanced development of initial or additional prototype units from 12 months to 2 years and from \$20 million to \$100 million in fiscal year 2017 constant dollars (10 U.S.C. 2302e), respectively. The modification also repeals the obsolete authority of section 819 of the NDAA for FY 2010 (Pub. L. 111-84), thereby eliminating the expiration date of September 30, 2019, for the contract authority for advanced development of initial or additional prototype units.

The objective of this rule is to implement sections 221 and 861 to establish broad agency announcements as a competitive procedure that may be used to select science and technology proposals and to expand the term limit and dollar threshold for the contract authority for advanced development of initial or additional prototype units. This rule impacts internal Government procedures by expanding the meaning of other competitive procedures to include the competitive selection of

science and technology proposals and expands the contract authority for advanced development of initial or additional prototype units.

There were no public comments concerning the initial regulatory flexibility analysis.

In FY 2017, DoD awarded 1,853 contracts for research and development, excluding Small Business Innovation Research (SBIR) and Small Technology Transfer Research (STTR) program requirements. Approximately 53% of those new contract actions were awarded to 1,005 of unique small business and nontraditional DoD entities. There were 2,858 new contract awards for SBIR and STTR program requirements for DoD. Approximately 66% of those new contract actions were awarded to 1,891 of unique small business and nontraditional DoD entities.

This final rule does not include any new reporting or recordkeeping requirements for small entities.

There are no known significant alternative approaches to the final rule that would meet the requirements of the applicable statute.

VI. Paperwork Reduction Act

This final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 206, 215, 234, and 235

Government procurement.

Jennifer Lee Hawes,

*Regulatory Control Officer, Defense Acquisition Regulations
System.*

Therefore, 48 CFR parts 206, 215, 234, and 235 are amended as follows:

1. The authority citation for 48 CFR parts 206, 215, 234, and 235 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 206—COMPETITION REQUIREMENTS

2. Subpart 206.1, consisting of 206.102, is added to read as follows:

Subpart 206.1—Full and Open Competition

206.102 Use of competitive procedures.

(d) *Other competitive procedures.*

(2) In lieu of FAR 6.102(d)(2), competitive selection of science and technology proposals resulting from a broad agency announcement with peer or scientific review, as described in 235.016(a) (10 U.S.C. 2302(2)(B)).

PART 215—CONTRACTING BY NEGOTIATION

3. Section 215.371-4 is amended by revising paragraph (a)(4) to read as follows:

215.371-4 Exceptions.

(a) * * *

(4) Acquisitions of science and technology, as specified
in 235.016(a); or

* * * * *

PART 234-MAJOR SYSTEM ACQUISITION

4. Section 234.005-1 is amended by-

a. Removing paragraph (2);

b. Redesignating paragraph (1) and (1)(i) through (iii) as
introductory text and paragraphs (1), (2), and (3),
respectively;

c. In the newly redesignated introductory text, removing
"general solicitation" and adding "broad agency announcement" in
its place;

d. In the newly redesignated paragraph (2) removing "12 months"
and adding "2 years" in its place; and

e. Revising the newly redesignated paragraph (3) to read as
follows:

234.005-1 Competition.

* * * * *

(3) The dollar value of the work to be performed pursuant to
the contract line item or contract option shall not exceed \$100
million in fiscal year 2017 constant dollars. (10 U.S.C. 2302e)

PART 235-RESEARCH AND DEVELOPMENT CONTRACTING

5. Section 235.006-71 is amended by-

- a. Redesignating the introductory text as paragraph (b); and
- b. Adding paragraph (a).

The addition reads as follows:

235.006-71 Competition.

(a) Use of a broad agency announcement with peer or scientific review for the award of science and technology proposals in accordance with 235.016(a) fulfills the requirement for full and open competition (see 206.102(d)(2)).

* * * * *

6. Section 235.016 is added to read as follows:

235.016 Broad agency announcement.

(a) *General.* A broad agency announcement with peer or scientific review may be used for the award of science and technology proposals. Science and technology proposals include proposals for the following:

- (i) Basic research (budget activity 6.1).
- (ii) Applied research (budget activity 6.2).
- (iii) Advanced technology development (budget activity 6.3).
- (iv) Advanced component development and prototypes (budget activity 6.4).

[FR Doc. 2019-02527 Filed: 2/14/2019 8:45 am; Publication Date: 2/15/2019]